

8/8/01

**THIS DISPOSITION
IS NOT CITABLE AS PRECEDENT
OF THE T.T.A.B.**

Paper No. 11
RLS/kk

UNITED STATES PATENT AND TRADEMARK OFFICE

Trademark Trial and Appeal Board

In re **Terroir Brands, LLC**

Serial No. 75/650,930

John S. Hale of Gipple & Hale for **Terroir Brands, LLC**.

David Elton, Trademark Examining Attorney, Law Office 101
(Jerry Price, Managing Attorney).

Before Simms, Cissel and Rogers, Administrative Trademark
Judges.

Opinion by Simms, Administrative Trademark Judge:

Terroir Brands, LLC (applicant), a Florida
corporation, has appealed from the final refusal of the
Trademark Examining Attorney to register the mark A. SONGY
& FILS for wine.¹ The Examining Attorney has refused
registration under Section 2(e)(4) of the Act, 15 USC

¹ Application Ser. No. 75/650,930, filed February 26, 1999, based upon applicant's allegation of a bona fide intent to use the mark in commerce. In the application, it is indicated that the English translation of the French word "FILS" is "SONS." Applicant has stated that A. Songy identifies a living individual associated with applicant (its president), whose consent to register is of record. Applicant indicates that this is also the name of the great-grandfather of applicant's president.

§1052(e)(4), on the basis that applicant's asserted mark is primarily merely a surname. Applicant and the Examining Attorney have submitted briefs but no oral hearing was requested.

We affirm.

Conceding that the initial burden is on the Office, the Examining Attorney argues that the evidence of record establishes a prima facie case that applicant's mark is primarily merely a surname. The Examining Attorney argues that applicant's mark consists of a first name initial followed by the surname Songy, in addition to an ampersand and the word "FILS" (meaning "SON" or "SONS"). The elements of applicant's mark, according to the Examining Attorney, reinforce the surname significance of the mark. The record includes a listing from the 1998 Phonedisc Powerfinder USA One database of "Songy" as the surname of 267 people. The Examining Attorney contends that even rare surnames may be unregistrable if the primary significance is that of a surname. Here, the Examining Attorney argues that there is no other significance of the term "SONGY."

The Examining Attorney has relied upon several decisions of this Board and our primary reviewing court: *In re Etablissements Darty et Fils*, 759 F.2d 15, 225 USPQ 652 (Fed. Cir. 1985) (DARTY held primarily merely a

surname); *In re I. Lewis Cigar Manufacturing Co.*, 205 F.2d 204, 98 USPQ 265 (CCPA 1953)(S. SEIDENBERG & CO'S. held primarily merely a surname); *Ex parte Sears, Roebuck & Co.*, 96 USPQ 360 (D.C. Cir. 1953)(J C HIGGINS held primarily merely a surname); *In re Nelson Souto Major Piquet*, 5 USPQ2d 1367 (TTAB 1987)(N. PIQUET held primarily merely a surname); and *In re Taverniti, SARL*, 225 USPQ 1263 (TTAB 1985), request for reconsideration denied, 228 USPQ 975 (TTAB 1985)(J. TAVERNITI held primarily merely a surname).

Applicant, on the other hand, argues that, in accordance with *In re Benthin Management GmbH*, 37 USPQ2d 1332 (TTAB 1995), the degree of rareness of a surname must be considered. Here, according to applicant, the number of persons with the surname Songy is numerically insignificant. Accordingly, applicant argues that one should infer that the primary significance of its asserted mark is not that of a surname. In support of its position, applicant has submitted a book entitled *American Surnames*, which lists 2000 of the most common surnames in this country. The surname "Songy" is not listed in this book.

Upon careful consideration of this record and the arguments of the attorneys, we agree with the Examining Attorney that applicant's asserted mark is primarily merely a surname. While the mark in the Darty case involved

simply the surname "Darty," what the Court said in that case, 225 USPQ at 653, is equally applicable to this case:

In this case, the subject mark is not only the surname of a principal of the business, but also is used in the company name in a manner which reveals its surname significance, at least to those with a modicum of familiarity with the French language. (Darty et Fils translates as Darty and Son). This, in itself, is highly persuasive that the public would perceive DARTY as a surname. In addition, the examiner made of record evidence that others in a number of cities in this country bear the surname DARTY. Thus, as a surname, DARTY is not so unusual that such significance would not be recognized by a substantial number of persons. Nor can the interests of those having the surname DARTY be discounted as de minimis. Under these circumstances, the statutory policy against immediate registration on the Principal Register appropriately should be applied.

Finally, what the predecessor court of the Federal Circuit stated in the *Lewis* case is also noteworthy, 98 USPQ at 267:

It seems to us that "Seidenberg" is clearly a surname which can have no other meaning or significance than that of a surname. Nor do we believe that the addition of the single initial is sufficient to remove it from that category. Further, the addition of the expression "& Co's.," whether it be in the abbreviated and possessive form present here, or in the usual form, cannot be held to distinguish or relate to anything except the surname "Seidenberg."

Applicant's attorney has not presented any argument as to why this authority is not persuasive herein. The cases applicant has relied upon have been adequately distinguished by the Examining Attorney in his brief.

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Because we believe that the Examining Attorney has established a prima facie case of surname significance, which applicant has not rebutted, this refusal must be affirmed.

Decision: The refusal of registration is affirmed.